IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3564 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNIL SHAH & 11 - Applicant(s)
Versus
BHARTIBEN N PATEL & 1 - Respondent(s)

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Appearance :
MR NITIN M AMIN for Applicant(s) : 1 - 12.
Mr Romil Kodekar, for M/s.TANNA ASSOCIATES for Respondent(s) : 1,
Ms. Manisha Lavkumar, Addl.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 13/02/2007

ORAL JUDGMENT

1. The petitioners, 12 officers of a company, have invoked the provisions of section 482 of the Criminal Procedure Code, 1973 for quashing the process issued

to them in, and the proceedings of, Criminal Case No.14200/96 pending in the court of learned Metropolitan Magistrate, Court No.6 at Ahmedabad, pursuant to the complaint of the respondent alleging the offence of evasion of octroi. That complaint dated 3.12.1996 has named 12 individuals as senior area manager, accounts manager, chairman, vice-chairman, and directors of the company which is not joined as the accused. The allegations in the complaint, in substance, are that during the inspection of the office premises by octroi inspectors of Ahmedabad Municipal Corporation, 11 documents related to import of several items without payment of octroi were found. The octroi duty was calculated and paid by petitioner No.1 within three days but the accused persons were alleged to have, in complicity with each other, committed offence under section 398 of the Bombay Provincial Municipal Corporation Act, 1949 (for short, "BPMC Act"). Pursuant to that complaint, learned Magistrate had ordered issuance of summons to them.

2. Learned counsel, Mr Nitin Amin, appearing for the petitioners submitted that petitioners No.1 and 2, who are the local officers, had taken care to see that the amount of octroi demanded by the Inspectors was immediately paid even as the record was yet to be verified by them. However, the present petition was not pressed on behalf of them, without prejudice to their rights and contentions and with a view to take the available defences in the trial court. However, the petition was pressed for petitioners No.3 to 12, who were members of the Directors' Board and secretary of the company, who were not even remotely connected or concerned with the transaction of import of material by the local office at Ahmedabad. He submitted that except a bare and vague allegation of complicity, no act or knowledge were attributed to these officers even in the allegations made in the complaint. Therefore, no offence could be made out and no material was produced with the complaint to even remotely suggest that those petitioners could be implicated in the alleged offence. He relied upon a recent judgment of the Supreme Court in ***Santoshkumar Podar v. State (NCT of Delhi)*** (2007 (2) Scale p.36)

to submit that there was no averment in the complaint as to how and in what manner those petitioners were responsible for the conduct of the business of the company and hence the process was required to be quashed as regards them.

3. Learned advocate, Mr Romil Kodekar appearing for the original complainant, relied upon the provisions of section 401 of the BPMC Act and submitted that in case of a company being accused of an offence, every director, manager, secretary, agent or other persons concerned with the management thereof, would be liable to be prosecuted and it would be for him to prove that the offence was committed without his knowledge or consent to escape from the deeming fiction that he would be guilty of such offence.

4. Upon bare perusal of the complaint in the present case and taking the allegations at their face value, it would appear that the allegation of involvement of petitioners No.3 to 12 are conspicuous by their absence and, if those persons were not even alleged to be concerned with the

management of the company in a narrow sense, their prosecution cannot be sustained. In view of the aforesaid recent decision of the Supreme Court, in absence of specific averment making the respondents vicariously liable for the alleged offence committed by the company, the petition is required to be allowed in respect of petitioners No.3 to 12. Accordingly the summons issued in and the proceedings of Criminal Case No.14200/96 are quashed as far as petitioners No.3 to 12 are concerned. Rule is made absolute accordingly and the interim relief staying the proceedings is vacated as far as petitioners No.1 and 2 are concerned. In the facts of the case, there is no order as to costs.

sd/-
[D. H. Waghela, J.]

msp